

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:

RICHARD E. HOLLINGER

Debtor

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CASE NO. 05-18717

DECISION AND ORDER

At Fort Wayne, Indiana, on May 12, 2006.

In this Chapter 13 case, Tower Bank and Trust Company, a creditor of the debtor, has filed both an objection to confirmation of the proposed plan and a motion asking the court's permission to examine the debtor pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure. It is the latter filing that is before the court at the present time. Whether or not the requested examination will be permitted is a matter committed to the court's discretion. In re French, 145 B.R. 991, 993 (Bankr. D. S.D. 1992).

Rule 2004 examinations are not a substitute for discovery authorized in adversary proceedings or contested matters. See, William L. Norton, Jr., Norton Bankruptcy Law and Practice 2d: Bankruptcy Rules, Rule 2004, Editor's Comment (b), at 142 (2005-2006 ed.). Neither are they vehicles by which parties can attempt to do a substantial portion of their discovery before initiating litigation. Instead, in situations like this when a creditor is seeking the examination, Rule 2004 is properly used in order to determine whether there are sufficient grounds to commence an action. In re Bennett Funding Group, Inc., 203 B.R. 24, 28 (Bankr. N.D. N.Y. 1996); In re Handy Andy Home Improvement Centers, Inc., 199 B.R. 376, 380 (Bankr. N.D. Ill. 1996).

In this instance, to the extent that Tower Bank seeks to examine the debtor in connection with

the objections to confirmation of the proposed plan, through that contested matter it has all of the traditional discovery rules and procedures freely available to it, without the requirement of court authorization. See, Fed. R. Bankr. P. Rules 9014; 7026, 7023-7037; In re GHR Energy Corp., 35 B.R. 534, 537-38 (Bankr. D. Mass. 1983). To the extent the bank seeks the examination in order to determine whether or not it will file an adversary proceeding to determine the dischargeability of the debtor's obligation to it, the allegations contained in the motion suggest that it is already in possession of sufficient facts which would allow it to make an informed decision in that regard. Thus, to conduct a 2004 examination under these circumstances would seem to be using it as an inappropriate substitute for formal discovery. Tower Bank's motion to examine the debtor pursuant to Rule 2004 is therefore DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court